

Revised 03/06 WDNV

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

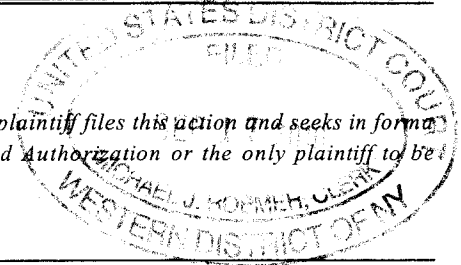
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FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)

All material filed in this Court is now available via the **INTERNET**. See **Pro Se Privacy Notice** for further information.

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: **NOTE:** If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.



1. Thomas B. Simcoe #09B0277

2. _____

-VS-

B. Full Name(s) of Defendant(s) **NOTE:** Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

1. Lieutenant Timothy Gray NTPD

4. _____

2. Officer Jeffrey Smith NTPD

5. _____

3. Officer Keith Glass NTPD

6. _____

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION **NOTE:** To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: Thomas B. Simcoe

Present Place of Confinement & Address: Attica CF, Box 149, Attica, NY 14011-0149

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: Lieutenant Timothy Gray NTPD
 (If applicable) Official Position of Defendant: Lieutenant North Tonawanda Police Dept.
 (If applicable) Defendant is Sued in X Individual and/or _____ Official Capacity
 Address of Defendant: do not know

Name of Defendant: Officer Jeffrey Smith
 (If applicable) Official Position of Defendant: Police Officer North Tonawanda Police Dept.
 (If applicable) Defendant is Sued in X Individual and/or _____ Official Capacity
 Address of Defendant: do not know

Name of Defendant: Officer Keith Glass
 (If applicable) Official Position of Defendant: Police Officer North Tonawanda Police Dept.
 (If applicable) Defendant is Sued in X Individual and/or _____ Official Capacity
 Address of Defendant: do not know

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
 Yes _____ No X

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:
 Plaintiff(s): _____
 Defendant(s): _____
2. Court (if federal court, name the district; if state court, name the county): _____
3. Docket or Index Number: _____
4. Name of Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

_____ Dismissed (check the box which indicates why it was dismissed):

_____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

_____ By court for failure to exhaust administrative remedies;

_____ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

_____ By court due to your voluntary withdrawal of claim;

_____ Judgment upon motion or after trial entered for

_____ plaintiff

_____ defendant.

B. Have you begun **any other lawsuits in federal court which relate to your imprisonment?**

Yes _____ No X

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☐ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|------------------------|-------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | • Excessive Force | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) Sept 29, 2007

defendant (give the **name and position held** of **each defendant** involved in this incident) Lt. Timothy Gray, Officers' Jeffrey Smith and Keith Glass (N.T.P.D.)

did the following to me (briefly state what each defendant named above did): After being tasered and lying incapacitated on a concrete floor these 3 officers pulled, twisted and crinked so hard on my right arm that it was pulled out of the socket and the bicep muscle was torn from the bone. At this point I am handcuffed and face down on the floor. The next thing that happens is Lt. Gray grabs me by the back of my head and slams my face into the concrete floor 3 times crushing my nose. He then stands on top of my handcuffed hands rocking his full weight back and forth causing damage. Officers' Smith & Glass did absolutely nothing to stop this torture.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: a violation of the 4th Amend. and the 14th Amend's ban on excessive force.

The relief I am seeking for this claim is (briefly state the relief sought): Compensatory and punitive damages and that these three officers' be terminated from their employment as police officers.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☐ Yes ☐ No If yes, what was the result? _____

Did you appeal that decision? ☐ Yes ☐ No If yes, what was the result? _____

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: This claim is against the arresting officers (North Tox.) I have no remedies to exhaust.

A. SECOND CLAIM: On (date of the incident) _____

defendant (give the **name and position held** of **each defendant** involved in this incident) _____

did the following to me (briefly state what each defendant named above did): _____

The constitutional basis for this claim under 42 U.S.C. § 1983 is: _____

The relief I am seeking for this claim is (briefly state the relief sought): _____

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? _____ Yes _____ No If yes, what was the result? _____

Did you appeal that decision? _____ Yes _____ No If yes, what was the result? _____

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

*I am requesting \$28 million in compensatory and punitive damages
and that these three officers be terminated from the N.T.P.O.*

Do you want a jury trial? Yes X No _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Sept 14, 2010
(date)

NOTE: *Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.*

Ghan B. Sinner #09B0277

Signature(s) of Plaintiff(s)